

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: REFUSAL OF SERVICE TO RELOCATING LIHEAP CUSTOMERS	DOCKET NO. DRU-02-2
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DECLARATORY ORDER

(Issued April 9, 2002)

On February 8, 2002, the Utilities Board (Board) received a letter from State Representative Jack Hatch requesting the Board issue a declaratory order addressing the following fact situation:

- 1) A low-income home energy assistance (LIHEAP) qualified head of household has an outstanding bill to a public utility for gas or electric service or both;
- 2) During the period from November 1 to April 1, the LIHEAP qualified head of household moves to another residence; and
- 3) The public utility refuses to provide service to the LIHEAP qualified head of household at the new residence.

Representative Hatch seeks an order concluding the utility's refusal violates the winter moratorium provisions in Iowa Code § 476.20 and 199 IAC 19.4(17) and 20.4(17).

On February 26, 2002, the Board issued an order giving notice of the request for declaratory order as required by Iowa Code § 17A.9(3). The Board also set a date for replies and intervention in the order and directed that all information for Board consideration should be filed with the petition to intervene. In the order, the Board indicated that it had until April 9, 2002, to issue a declaratory order pursuant to Iowa Code § 17A.9(8).

On March 25, 2002, the Board issued an order granting interventions, granting the motion to late file of the Iowa Coalition for the Housing and Homeless (ICHH), and establishing a reply date to ICHH's late-filed response. The Board granted intervention to the Iowa Association of Municipal Utilities (IAMU), Iowa Association of Electric Cooperatives (IAEC), Legal Services Corporation of Iowa (Legal Services), Iowa Community Action Association (ICAA), MidAmerican Energy Company (MidAmerican), Interstate Power and Light Company (IP&L), ICHH, and the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

No replies were filed to the response filed by ICHH.

The language most relevant to this issue is found in the first and the last sentences of Iowa Code § 476.20(3) which provide:

The board shall establish rules, which shall be uniform with respect to all public utilities furnishing gas or electricity relating to disconnection of service Notwithstanding subsection 1 [discontinuance for nonpayment of account], a public utility furnishing gas or electricity shall not disconnect service from November 1 through April 1 to a residence which has a resident that has been certified under this paragraph.

Two identical Board rules at 199 IAC 19.4(17) (gas) and 20.4(17) (electric) implement subsection 476.20(3). Those subrules provide in pertinent part:

19.4(17). *When disconnection prohibited.* No disconnection may take place from November 1 through April 1 for a resident who is a head of household and who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program.

The issue raised by this request for a declaratory order is whether the utility can deny electric or gas service at the subsequent residence of a qualified head of household owing a bill who changes residences during the moratorium period. The analysis must focus on the meaning of the word "disconnection" in both the statute and the rules. The Random House Dictionary of the English Language, 2nd Ed., Unabridged (1987), includes the definition "the state of being disconnected; lack of connection." The Board believes that is the appropriate definition to apply to "disconnection" in the statute and the subrules. Other definitions that emphasize the act of disconnecting and not the state of being disconnected are inconsistent with the purpose of the statute, which is to protect the health and safety of the persons living at the residence of the LIHEAP-qualified head of household during Iowa winters. The effect of the application of that definition to the Board's subrules is to prohibit the utility from refusing service during the moratorium period to a residence of a qualified head of household, because to do so would leave the residence in a state of being disconnected or lacking connection.

A Division of Community Action Agencies rule, 472 IAC 10.9, appears to be consistent with and to support the Board's conclusion. That rule requires the local agency to forward the LIHEAP funds to the subsequently serving utility when a LIHEAP-certified head of household moves. This shows the intention that LIHEAP assistance follows the head of household to a new address.

The Board in this declaratory order is not addressing the question of what protection applies to other members of the certified head of household's household, nor is the Board addressing the question of whether a new customer who is certified as a head of household has to be given service. The Board addressed this latter question in Iowa-Illinois Gas and Electric Company, Docket No. DRU-90-2, "Declaratory Ruling" (March 16, 1990). The Board finds that the issue addressed in Docket No. DRU-90-2 is distinguishable from the specific fact situation in this declaratory order. Here the question relates to refusal of service to a person already a certified head of household, the utility is aware that the head of household is LIHEAP certified, and the head of household moves. In Docket No. DRU-90-2, the utility refused service to a residence disconnected at the request of the landlord who was the customer of record before the head of household became LIHEAP certified. While the Board is not reaching the fact situation in Docket No. DRU-90-2 in this order, it appears that the language in that declaratory ruling concerning the lack of any utility obligation to reconnect service for a newly LIHEAP-qualified head of household may be inconsistent with the principle established in this declaratory order.

Based upon the above discussion, the Board concludes that a public utility is prohibited by Iowa Code § 476.20(3) and Board subrules 19.4(17) and 20.4(17) from refusing service from November 1 through April 1 to a LIHEAP-certified head of household with an outstanding bill who moves to another residence.

The responses of the parties have raised questions about whether the Board's rules on disconnection and refusal of service should be revised. Board staff will be directed to review the rules in this area and make a proposal to the Board as to whether a rule making is necessary.

IT IS THEREFORE ORDERED:

A declaratory order as described above is issued in response to the request filed by Representative Jack Hatch on February 8, 2002.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 9th day of April, 2002.